



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

BRINKS HOFER GILSON & LIONE
PO BOX 10395
CHICAGO IL 60610

COPY MAILED

NOV 16 2004

OFFICE OF PETITIONS

In re Application	:
Robert K. Ellis	:
Application No. 09/954,447	: DECISION ON APPLICATION
Filed: September 14, 2001	: FOR PATENT TERM ADJUSTMENT
Atty Docket No. 3410/11	:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. 1.705(b)," filed April 19, 2004. Applicant requests that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from seventeen (17) days to forty-four (44) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **forty-four (44) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On January 20, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above identified application. The Notice stated that the patent term

adjustment (PTA) to date is seventeen (17) days. On April 19, 2004, Applicant timely¹ submitted the instant application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is forty-four (44) days.

Applicant asserts entitlement to a patent term adjustment of forty-four (44) days on the basis that the PTO improperly assessed Applicant a delay of seventy (70) days for responding to a Notice to File Missing Parts mailed on October 15, 2001. Applicant asserts that while he did not timely file a response within the three month period pursuant to 37 C.F.R. 1.704(b), their response was filed on February 27, 2002. Accordingly, Applicant states that he should have only been assessed delay of forty-three (43) days, not seventy (70) days.

Applicant states that the patent issuing from the application is not subject to a terminal disclaimer.

The Office initially determined a patent term adjustment of seventeen (17) days based on an adjustment for PTO delay of one hundred fifty-one (151) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), reduced by Applicant's delays of seventy (70) days and sixty-four (64) days, both pursuant to 35 U.S.C. 154(b)(2)(C)(iii) and 37 C.F.R. § 1.704(b). The PTO delay of 64 days has been reviewed and found to be correct. The adjustment of 70 days is at issue.

The adjustment of seventy (70) days has been found to be incorrect. Applicant has submitted a copy of a postcard receipt for the instant application, itemizing a declaration and the proper fees, and bearing a USPTO date stamp of February 27, 2002. A postcard receipt which itemizes and properly identifies the items which are being filed serves as prima facie evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.² Accordingly, it is concluded that Applicant filed a complete reply in response to the October 15, 2001 Notice to File Missing Parts on February 27, 2002, and therefore should have only been assessed a delay of forty-three (43) days.

¹ Applicant filed the application for patent term adjustment on the same date as the filing of the issue fee.

² MPEP 503.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **forty-four (44) days** (151 days of PTO delay and 107 (43 + 64) days of applicant delay).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e).

The application file is being forwarded to the Office of Patent Publication for processing into a patent.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

*Karin Ferriter
for*

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Revised PAIR Screen